



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Ms. Doreen E. McGookey
Assistant City Attorney
Criminal Law and Police Division
501 Police & Courts Building
Dallas, Texas 75201

OR96-0445

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34207.

The City of Dallas (the "city") received a request for information for, among other things, the supervisory notes taken by Lieutenant Paulhill.¹ You contend that the notes are excepted from required public disclosure under sections 552.108 and 552.111 of the Government Code.

We understand that Dallas is a civil service city under the Texas Local Government Code. Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of a police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g); *see also* Open Records Decision No. 327 (1982) (anything relating to employee's employment and its terms constitutes information relevant to employment relationship, and is therefore part of employee's personnel file).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the

¹You state that the city has no objection to releasing the other information that was requested.

department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

Accordingly, subsection (g) of section 143.089 of the Local Government Code permits a police or fire department to maintain personnel files on its employees that contain more and different information than appears in such employees' civil service personnel files; this additional information must be reasonably related to the person's employment relationship. Open Records Decision No. 562 (1990). The *department* file is excepted by section 552.101 of the Government Code if it is so "reasonably related," but the civil service file may be withheld only if it falls within an exception to disclosure under chapter 552 of the Government Code. *Id.*

We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If they are, the city must withhold the requested information.² However, as "any record, memorandum, or document relating to" disciplinary action must be placed in the personnel files maintained by the civil service commission, if the notes relate to disciplinary action, they must be placed in the personnel files maintained by the civil service commission under section 143.089(a).

We now address your other claims in the event that the documents submitted to this office for review are not part of a police officer's section 143.089(g) files. Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice,

²We also note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

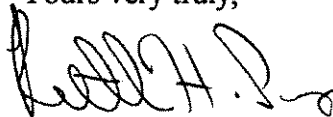
The submitted information concerns routine internal administrative and personnel matters. Accordingly, you may not withhold the requested information under section 552.111 of the Government Code.

Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3.

You assert that the highlighted information reveals tactical decisions regarding abortion protest situations. We agree that portions of the highlighted information demonstrates on its face that release of the information would unduly interfere with law enforcement and crime prevention. We have marked the information that may be withheld under section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LBC/ch

Ref: ID# 34207

Enclosures: Marked documents

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